

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5252 of 1995

with

CIVIL APPLICATION NO.10399 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

D M SOLANKI

Versus

CHIEF SECRETARY

Appearance:

MR IS SUPEHIA for Petitioner

MR DA BAMBHANIA for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 19/12/96

ORAL JUDGEMENT

1. Pursuant to advertisement issued by the Gujarat Public Service Commission in the year 1991 for holding competitive examination for recruitment of Cl.I & Cl.II Officers under Gujarat Government there were 8 vacancies in the post of Gujarat Administrative Service, Deputy Police Superintendents, District Registrar of Cooperative

Societies and Prohibition & Excise Superintendent. In Gujarat Administrative Service there were 32 vacancies out of which two were reserved for SC and 6 for ST candidates. Advertisement also stipulated that the candidate shall give his preference for the post, service in the prescribed form in Nos 1, 2 & 3. The petitioner admittedly belong to SC had shown Gujarat Administrative Service as his first preference, and in fact, competed for the said post while he showed second preference for District Registrar of Cooperative Societies.

2. The petitioner appeared at the test, written as well as oral, conducted by the GPSC and the GPSC has recommended his name to the Government for appointment to Cl.I post in the cadre of District Registrar of Cooperative Societies--the cadre of his second preference. In the select and merit list which is prepared by the GPSC name of the petitioner appeared at Sl.No.31, and accordingly, he was recommended for the post of District Registrar of Cooperative Societies--the post of his second preference. He accepted the appointment and has been working on said post of District Registrar of Cooperative Societies since the date of his appointment.

3. Admittedly, one person belongs to ST stood at Sl.No.22 and two other persons belonging to the very category were shown at Sl.Nos 36 & 37. Admittedly, there were two vacancies for SC candidates and accordingly the candidate at Sl.No.22 was offered the post of Gujarat Administrative Service as per his first preference, and other three candidates have also given first preference for Gujarat Administrative Service. It appears arose between the representatives of Gujarat Karmachari Utkarsh Mandal and the State Government and the question was as to how in the direct recruitment candidate belonging to SC/ST for reservation is made and whether coming on merit will be counted against nonreserved vacancies. After careful consideration an agreement was reached between the aforesaid Gujarat Karmachari Utkarsh Mandal and the State Government and it was decided where members belonging to SC/ST are selected for appointment by direct selection to any service or post included in the State services and Panchayat Services on the basis of merit, then such members shall be considered for appointment on unreserved posts which are filled in on merit, along with other candidates not belonging to such Castes and Tribes and such appointment on merit of the members belonging to such Castes and Tribes shall not, in anyway, affect the claims of the members of such Castes and Tribes for appointment in the services or on the posts reserved for

them under the Government orders issued from time to time. According to this decision, the General Administration Department issued Notification, dated 1.4.80 and prepared the Rules in exercise of powers conferred by Article 309 of the Constitution of India known as Gujarat Civil Service Recruitment (Examination) Rules, 1980. Rule 9 of the said Rules of 1980 inter alia provides that:

"a candidate who desires to compete for any or all categories of posts shall be required to tick the box in the application form against the posts for which he wishes to be considered and inside the box state the order of preference for that post by figures, viz 1,2,3 and so on."

It further provides that:

"Having regard to his rank in the order of merit and the number of vacancies available, consideration may be given as far as feasible to his preference when making appointment by Government. The appointment to various posts shall also be governed by the recruitment rules in force as applicable to the respective posts at the time of appointment. If a candidate refuses to join the appointment in the post offered to him, his name shall be deleted from the list of qualified candidates. Similarly, no request for change in the allotment of post shall be considered by Government at any time after the allotment".

It is, thus, clear that if a candidate belongs to SC/ST and he is even otherwise found fit and meritorious enough to get the post of 2nd and 3rd preference on the basis of marks obtained by him, he may be offered the appointment in that cadre despite his preference being for Gujarat Administrative Service.

4. Since the petitioner was in the merit list at Sl.No.31 and since he belonged to ST category and since he has given his preference for Gujarat Administrative Service his case that he ought to have been selected and appointed on Gujarat Administrative Service Cl.I post and the persons belonging to ST who were posted down below in the merit list should not have been allotted to the Gujarat Administrative Services as per their preference. It is his case that this has resulted into violation of his fundamental right guaranteed by Articles 14 & 16 of the Constitution of India, and therefore, petition is required to be allowed and he is required to be posted to the post of his first preference as he is belonging to

ST. It may be noted that as per advertisement there were 37 vacancies in Gujarat Administrative Services out of which two were reserved for SC and one for ST and one person belonging to SC who was selected and posted below in merit list was also selected and posted as Cl.I Officer in Gujarat Administrative Services. However, the petitioner having shown his preference for District Registrar of Cooperative Societies. As per his second preference on his own merit he came to be posted and selected for such post and in fact the petitioner has accepted such appointment without any demur and has been serving on the post of District Registrar, Cooperative Societies from the date of his appointment. Prior to accepting his appointment he has not objected to the post of District Registrar, Cooperative Societies based on his second preference nor he has informed the Government that he was accepting his appointment to the cadre of District Registrar, Cooperative Societies conditionally and subject to his rights and contentions for his posting in Gujarat Administrative Services Cl.I. The petitioner is, therefore, prima facie guilty of blowing hot and cold. He being accepted the appointment without any demur or objection to the post of District Registrar, Cooperative Societies, must continue to serve the said post and he can not be permitted to blow hot and cold or to accept the appointment and thereafter fall back upon his right of being promoted to Gujarat Administrative Services on the basis of his merit and selection in the reserved quota. It is pointed out by the Ld. Advocate Mr. Supehia that in fact he has made representation to the Government for being appointed to the post of Gujarat Administrative Service, but it is admitted fact that even prior to making representation he has accepted the appointment to the post of District Registrar, Cooperative Societies and no representation or objection subsequently taken can resuscitate a right which a person has already lost by his own conduct. Petition is, therefore, liable to fail on this very ground itself.

5. Turning now to the merits of the case, it must be stated that as per the rules framed by the State of Gujarat in consultation with the persons belonging to SC, ST an agreement was reached and the rules were accordingly framed exercising powers under Article 309 of the Constitution of India. Rule 9 of the said rules being relevant is quoted hereinabove. As per said rule if a person belonging to reserved category is entitled to the post from out of his preference on his own merits, and he should be offered a post first and room should be made available for the candidate belonging to reserved quota if they are otherwise eligible and selected on

merits for being appointed to any of the aforesaid services. The constitutionality or validity of the aforesaid rule is not challenged before this court. The petitioner has not only not challenged the legality and constitutionality of the said rule, but even he has already reaped the benefit of his being appointed to the post of his second preference on merit in general category and he has been working in the said post since the date of his appointment. On merits also, therefore, the claim of the petitioner must fail and the petition is liable to be dismissed on this second count also and is hereby dismissed. Rule is discharged. No costs. CA also stands disposed of accordingly.

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